

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WILLIAM FLOWERS,

Petitioner,

ORDER

v.

13-cv-701-wmc

LISA AVILA, Superintendent,
Sturtevant Transitional Facility,

Respondent.

William Flowers filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging a state court conviction in Dane County Case No. 2011CF1101. On November 22, 2013, the court issued an order directing Flowers to show cause why his petition should not be dismissed as barred by the doctrine of procedural default. (Dkt. # 11). Flowers contends that the court is mistaken, but offers no explanation as to why this is so or why the court should excuse the apparent default outlined in the court's order. Instead, he appears to request leave to withdraw his petition in favor of one that he has already filed in the Eastern District of Wisconsin. Alternatively, he asks the court to transfer this case to the Eastern District so that the two petitions can be consolidated.

The court construes Flowers's response as a request for voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A), which allows dismissal upon the movant's request before the opposing party serves either an answer or a motion for summary judgment. Because no responsive pleading has been requested or received in this case, the court will grant Flowers's request to withdraw his petition and this case will be dismissed without prejudice. *See Smith*

v. Potter, 513 F.3d 781, 782-83 (7th Cir. 2008) (observing that a plaintiff's motion for voluntary dismissal filed before the opposing party serves either an answer or dispositive motion automatically effects dismissal of the case); *see also Nelson v. Napolitano*, 657 F.3d 586, 587-88 (7th Cir. 2011) (discussing the effect of a voluntary dismissal under Rule 41(a)) (collecting cases).

ORDER

IT IS ORDERED that:

1. The request by William Flowers to withdraw or voluntarily dismiss his habeas corpus petition is GRANTED.
2. This case is DISMISSED without prejudice pursuant to Fed. R. Civ. P. 41(a).
3. The clerk's office shall terminate all pending motions and close this case.

Entered this 24th day of January, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge